

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
Meeting Date: November 14, 2017
Request to Amend Loan Agreement and Consent to the Sale of Assets

Prepared by: Kris Luoma

Summary. Staff requests Authority approval to consent to the sale of the Ratto Group of Companies (“Ratto” or the “Company”) project and its assets to a person/entity other than a participating affiliate which in this case is Recology Inc. and to amend the Series 2007A Loan Agreement. Recology, Inc. is in the process of acquiring The Ratto Group of Companies and all of its assets.

Background. On March 20, 2007, the Company received Final Resolution and Volume Cap Allocation Approval in the amount of \$42,600,000 to finance the following project (the “2007A Project”):

- purchase of land and an existing building to house the collection fleet and serve as the corporate yard to be used for truck maintenance, washing and parking, container storage, and administrative offices and
- acquisition of waste collection vehicles and waste containers to be located at various customer locations throughout the service area.

On November 2, 2012, the Company received Final Resolution and Volume Cap Allocation Approval in the amount of \$16,500,000 to finance the following (the “2012 Project”):

- upgrade two MRFs located in Santa Rosa, which included the purchase of new sort lines, conveyors, balers and loaders.
- upgrade to its MRF facility in Petaluma which includes the MRF upgrades described above as well as the construction of additional buildings, new pavement, a water collection and pretreatment system, and other general site improvements; and
- purchase of collection vehicles, containers and transfer station equipment to be housed at various locations.

By written notice dated September 7, 2017, the Company informed the Authority that it wished to sell the Projects and all or substantially all of its assets to Recology Inc. At its meeting of October 14, 2007, the Authority consented to the sale of the assets comprising the 2012 Project in accordance with Section 5.2(e) of the 2012 Loan Agreement.

Current Request.

Both the 2007A and 2012 Loan Agreements restrict the ability of a Borrower to sell all or substantially all of its assets unless it meets certain conditions which include providing to the Authority: (1) advance written notice, (2) evidence that the purchaser is in good standing, (3) an assignment and assumption agreement signed by the purchaser, (4) consent from the Letter of Credit bank, (5) a determination from a rating agency that the rating on the Bonds will not be lower as a result of the sale, and (6) an opinion of counsel. But the Company does not have to comply with these sale requirements if the Bonds will be fully repaid on the same day as the sale.

In this case, Recology, Inc. does not wish to assume the obligations of Ratto in relation to the Bonds and instead wishes to cause the redemption of the 2007A and 2012 Bonds at the earliest possible date after the sale. In accordance with the 2007A and 2012 Bond Indentures, such a redemption can occur only on an “Interest Payment Date” (the first Wednesday of every month), which may not coincide with the sale date. If the 2007A and the 2012 Bonds were not secured by a letter of credit, the Company could repay Bonds on the sale date, but because the bondholders purchased the Bonds on the basis of the letter of credit, the letter of credit must stay in place until redemption is permitted by the Bond Indentures. The Company intends to redeem the Bonds on the first Interest Payment Date following the sale of the assets, but no later than January 3, 2018,

Section 5.2(e) of the 2012 Loan Agreement permitted the Authority to consent to the sale even though it does not meet all of the conditions described above and the Company requested that the Authority use its consent power under Section 5.2(e) because complying with the conditions is too cumbersome as the Bonds will remain outstanding for only a brief period after the sale. The 2007A Loan Agreement does not have a provision similar to Section 5.2(e). The Company therefore requests the Authority to amend the 2007 Loan Agreement to include a provision virtually identical to that found in the 2012 Loan Agreement which permits the Company to sell all or substantially all of its assets upon consent of the Authority even though it does not meet all of the conditions described above. Section 10.04 of the 2007 Loan Agreement allows the amendment of its terms by the parties upon written consent of the Administrative Agent and the Trustee. Section 6.07(b) of the 2007A Bond Indenture permits the Trustee to consent if it receives an opinion of counsel that such an amendment will not result in any material impairment of the security given for the payment of the 2007A Bonds. Both the Trustee and Administrative Agent have provided written approval of the first amendment to the 2007 Loan Agreement.

Pursuant to Section 5.2 of the 2007A Loan Agreement, as amended, and the 2012 Loan Agreement, the Authority is requested to consent to the sale of all or substantially all of the Company’s assets to the Purchaser, Recology Inc., upon the condition that the Bonds will be redeemed on the first Interest Payment Date, as defined in the applicable Indentures, after the date of the Asset Purchase, but in no event later than January 3, 2018.

Because the 2007A and 2012 Bonds will remain outstanding for only a brief period, the Company will provide satisfactory evidence to the Authority that a portion of the sale proceeds will be applied solely to redeem the 2007A and 2012 Bonds and that the Letter of Credit will remain in effect until such Bonds are redeemed. The applicable Bond Indenture and Loan Agreement for the Bonds will remain in full force and effect.

Staff Recommendation. Staff recommends the Authority approve Resolution No. 17-01-002 which delegates to the Executive Director the authority to consent to the sale of the 2007A and 2012 Projects and assets to Recology Inc. and/or its affiliates and to approve the first amendment to the 2007A Loan Agreement.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL
FINANCING AUTHORITY APPROVING THE FIRST AMENDMENT TO
THE LOAN AGREEMENT BETWEEN THE RATTO GROUP OF
COMPANIES, INC. AND THE AUTHORITY DATED AS OF JULY 1, 2007
AND APPROVING THE EXECUTION AND DELIVERY OF A CONSENT
AGREEMENT AND AUTHORIZING CERTAIN OTHER ACTIONS IN
CONNECTION THEREWITH**

November 14, 2017

WHEREAS, the California Pollution Control Financing Authority (“Authority”), a public instrumentality, approved certain applications of The Ratto Group of Companies, Inc., a Delaware corporation (the “Borrower”) for financial assistance in the acquisition and construction of certain pollution control facilities (collectively, the “Projects”) and issued its California Pollution Control Financing Authority Variable Rate Demand Solid Waste Disposal Revenue Bonds (The Ratto Group of Companies Inc. Project) Series 2007A and its California Pollution Control Financing Authority Variable Rate Demand Solid Waste Disposal Revenue Bonds (The Ratto Group of Companies, Inc. Project) Series 2012 (collectively, the “Bonds”) to provide such financial assistance; and

WHEREAS, the proceeds received from the sale of the Bonds were loaned to the Borrower pursuant to the terms and provisions of that certain Loan Agreement, dated as of July 1, 2007 (the “2007 Loan Agreement”) and that certain Loan Agreement, dated as of October 1, 2012 (the “2012 Loan Agreement”) (as amended, collectively, the “Loan Agreements”) to finance the Projects as further described in Exhibit A to such Loan Agreements; and

WHEREAS, the Borrower has entered into an asset purchase agreement with Recology, Inc., a California corporation (the “Purchaser”) pursuant to which the Borrower and North Bay Corporation, Inc., a California corporation (“North Bay”) and collectively with Borrower, the “Sellers”) have agreed to sell substantially all of their assets to the Purchaser, including such Borrower assets constituting the Projects (collectively, the “Asset Purchase”); and

WHEREAS, the Borrower intends to use a portion of the proceeds of the Asset Purchase to redeem the Bonds on or after the date of such Asset Purchase; and

WHEREAS, certain Lenders (the “Lenders”) and the Administrative Agent for such Lenders (the “Agent”) desire to provide approval of the Asset Purchase, including the sale of the Projects pursuant to that certain Consent Agreement (the “Consent Agreement”) by and among the Sellers, the Lenders and the Agent, as acknowledged by the Authority; and

WHEREAS, the Loan Agreements prohibit the Borrower from selling all or substantially all of its assets other than as provided therein; and

Agenda Item 4.C.

WHEREAS, Section 5.2(e) of the 2012 Loan Agreement permits the Borrower to sell all or substantially all of its assets upon consent of the Authority to such transaction in writing and requires the Borrower to provide such information, reports and documents relating to the transaction as the Authority may reasonably request; and

WHEREAS, the Borrower requests the Authority to amend the 2007 Loan Agreement to include a similar provision permitting the Borrower to sell all or substantially all of its assets upon consent of the Authority to such transaction in writing; and

WHEREAS, Section 10.04 of the 2007 Loan Agreement allows amendment of its terms by the parties provided that the Administrative Agent and the Trustee have agreed thereto and the amendment shall be in accordance with Section 6.07(b) of the 2007 Indenture; and

WHEREAS, the Trustee and the Administrative Agent have given their approval of the amendment of the 2007 Loan Agreement pursuant to Section 6.07(b) of the 2007 Indenture as evidenced by the letters attached hereto;

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority, as follows:

Section 1. The Authority finds and determines that the foregoing recitals are true and correct.

Section 2. The First Amendment to the 2007 Loan Agreement is hereby approved in substantially the form on file with the Authority prior to this meeting, with such insertions, deletions or changes therein as the officer(s) executing and/or delivering the same may require or approve, such approval to be conclusively evidenced by execution and delivery thereof.

Section 3. Pursuant to Section 5.2 of the Loan Agreements, as amended, the Authority hereby consents to the sale of all or substantially all of the Borrower's assets to the Purchaser upon the condition that the Bonds will be redeemed on the first Interest Payment Date, as defined in the applicable Indentures, after the date of the Asset Purchase, but in no event later than January 3, 2018.

Section 4. The Chairman and/or the Executive Director or the Deputy Executive Director is each hereby authorized and directed, acting alone, to request information and documentation from the Borrower relating to the sale, including documentation evidencing that a portion of the sale proceeds will be applied solely to redeem the Bonds and that the Letter of Credit will remain in effect until the Bonds are redeemed.

Section 5. The Chairman and/or the Executive Director or the Deputy Executive Director of the Authority is each hereby authorized and directed, acting alone, to do any and all ministerial acts, including (without limitation) to execute and deliver any and all documents and certificates, including any consent agreement, they may deem necessary or advisable in order to effectuate the purpose of this resolution.

Section 6. This resolution shall take effect immediately upon its passage.